

**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

Award No. 25309

Docket No. 45072

02-1-01-1-M-2082

The First Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Locomotive Engineers
(Montana Rail Link, Inc.

STATEMENT OF CLAIM:

“That Switchman Jones’ discipline be reversed and that he be reinstated immediately with seniority unimpaired, that he be made whole for all lost time resultant from this incident and fact finding, and that notation on his personal record be removed.”

FINDINGS:

The First Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Claimant was dismissed from the service of the Carrier on May 31, 2000 as a result of a Hearing on May 23, 2000.

In 1994 the Carrier revised its discipline policy which combined demerits and suspensions. The Policy reads as follows:

"MONTANA RAIL LINK DISCIPLINE POLICY

1. Each letter of censure will equal one (1) demerit.
2. Each day of discipline issued will equal one (1) demerit.
3. A day of discipline may not be actual suspension, but could include education days or deferred days if warranted, but will equal a demerit in all cases.
4. After an accumulation of 100 demerits a fact finding will be held and dismissal considered if the fact finding warrants.
5. Your personal record will be updated to the new system starting with discipline issued after January 1, 1992.
6. For each year you are not involved in receiving discipline 15 demerits will be removed from your record.
7. These are the 30 most commonly violated rules for which discipline has been assessed on Montana Rail Link. Other rules will be dealt with on an individual basis and discipline, if assessed, will equal demerits.
8. The superintendent reserves the right to deviate from the chart up or down for extenuating circumstances.
9. This reward system will be based on MRL's accident experience for the past years. If as a team the average accident expense is reduced by 25 percent, every MRL employee will receive a \$300 bonus after the financial year is completed. To be eligible for this bonus you will have to have worked 1000 hours in 1994 and be employed on December 31, 1994."

A table of various Rules violations was attached to the policy indicating the appropriate discipline to be taken for various offenses. None of the offenses listed indicated a 60-day or 90-day suspension as appropriate other than causing a collision.

As a result of the disciplinary action taken on May 8, 2000 the Claimant had amassed over 100 demerits, and in accordance with the Policy a fact finding Hearing was held. The Policy does not call for dismissal when the 100 point toll has been reached. Dismissal is discretionary.

The Claimant was hired on August 18, 1992. The Claimant's disciplinary record reads as follows:

"12/28/93	Censure
04/07/95	Censure
05/24/95	Two days suspension
01/02/97	Two days suspension
01/10/97	60 days suspension
01/19/98	Censure
05/08/00	90 days suspension"

In First Division Award 25308 the Board held the 90-day suspension was warranted based on the Claimant's past record along with the seriousness of the offense.

Now the Carrier comes before the Board saying the discipline administered on May 8, 2000 should have been a dismissal. If the Carrier felt the incident on April 26, 2000 was such a serious violation of the Rules in combination with the Claimant's past work record to warrant dismissal, it should have done so.

The Board finds the Carrier was unduly harsh in the application of its discipline policy. In fact, it appears the Claimant was disciplined twice for the same offense. We find the 90-day suspension issued on May 8, 2000 to be sufficient. The Claimant will be reinstated with pay for all time lost after the conclusion of the suspension, August 6, 2000.

This Award does not in any manner restrict the Carrier from instituting a fair and just discipline policy.

AWARD

Claim sustained in accordance with the Findings.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Dated at Chicago, Illinois, this 25th day of February, 2002.